

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

FILED
JUL - 3 2007
U.S. DISTRICT COURT
WHEELING, WV 26003

SEAN M. LYONS-PRICE,

Petitioner,

v.

CIVIL ACTION NO. 3:05-CV-94
(BAILEY)

JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of proposed report and a recommendation ["R & R"]. Magistrate Judge Seibert filed his R & R on February 5, 2007 [Doc. 26]. In that filing, the magistrate judge recommended that this Court grant the claimant's Motion for Summary Judgment and to remand to the Commissioner. The magistrate further recommended this Court deny the Commissioner's Motion for Summary Judgment [Doc. 25].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due by February 20, 2007, within ten (10) days after being served with a copy of the R & R pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). No objections have been filed.

It is the opinion of the Court that the **Magistrate Judge's Report and Recommendation** [Doc. 8] should be, and is, hereby **ORDERED ADOPTED**. Accordingly, the Court hereby **GRANTS** the Claimant's Motion for Summary Judgment and **REMANDS** the case to the Commissioner. The ALJ misinterpreted the opinion of the claimant's physician, Dr. Singh, and placed controlling weight on that mistaken interpretation. Additionally, the Court **DENIES** the Commissioner's Motion for Summary Judgment [Doc. 25].

The Clerk is directed to mail a true copy of this Order to all counsel of record and the *pro se* petitioner.

DATED: July 2, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE